IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Bail Appl..No. 7622 of 2007()

CRIME NO. 333 OF 2005 OF ALATHUR POLICE STATION

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PETITIONER

NISHIL, S/O.RAMACHANDRAN, AGED 29,
PAYYAPPATT VEEDU, POLYGARDEN ROAD,
LAKKIDI, OTTAPALAM.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7622 of 2007

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Dated this the 12th day of December, 2007

O R D E R

Petitioner is the 11th accused in Crime No.333 of 2005 of Alathur police station. That crime is registered under Section 302 I.P.C. The petitioner was arrested in the course of investigation of that crime. He was granted default bail under the proviso to Section 167(2) Cr.P.C. in as much as the final report was not filed within the period of 90 days. The petitioner was released from custody. He was allegedly involved in some other very grievous crimes. An application was filed to cancel his bail. That application was allowed by the learned Sessions Judge as per order in Crl.M.P.No. 3038 of 2006 dt.19.9.2006. The petitioner was taken back to custody on the strength of that order on 2.5.2007. In fact he was not arrested while he was enjoying the liberty under the earlier bail order. He had been arrested in some other crime and a production warrant was issued to cause his production in this crime. The petitioner has been

continuing in custody from 2.5.2007 in this case as per the production warrant issued and the subsequent remand consequent to the order in Crl.M.P. No. 3038 of 2006 by the Sessions Court, Palghat.

2. The petitioner came to this Court again seeking regular bail and by order dt.10.10.2007 in B.A.No. 5155 of 2007 the petitioner's application for regular bail was dismissed. It was however observed that the petitioner can come to this Court for bail again at a later stage, not at any rate prior to 26.11.2007.

3. The petitioner has now come to this Court with this bail application on 3.12.2007. The learned counsel for the petitioner submits that the final report has not been filed so far and the petitioner is at any rate entitled to be enlarged on bail now.

4. The learned counsel for the petitioner raises a very serious contention. He contends that the order in Crl.M.P. 3038 of 2006 of the learned Sessions Judge, Palghat has been challenged before this Court in Crl.R.P. No. 4588 of 2006 and another Bench of this Court, as per order dt. 21.12.2006, had directed stay of the said order canceling bail.

After 21.12.2006 no court could have taken any steps to get the petitioner into custody or to remand him in this crime in view of the order of stay dt.21.12.2006. Consequently the learned counsel for the petitioner contends that the detention of the petitioner as per the production warrant from 2.5.2007 is incorrect, improper and illegal. As his very detention is illegal and improper, the petitioner may now be released from custody, submits the learned counsel.

5. The learned counsel fairly submits that there has been an omission on the part of the petitioner to apprise all courts from 2.5.2007 till this date of the interim order passed in Crl.R.P. 4588 of 2006 by another Bench of this Court dt. 21.12.2006. That omission notwithstanding, the petitioner is not liable to continue in custody for one day longer, submits the counsel.

6. The learned Prosecutor was directed to take instructions. The file in Crl.R.P.4588 of 2006 was called to this Court for perusal. I have perused the files. I have secured a report from the learned Magistrate also. The report shows that production warrant was issued

solely on the basis of the order in Crl.M.P.No.3038 of 2006 dt.19.9.2006 of the learned Sessions Judge, Palghat. The production warrant was issued as the learned Magistrate was not aware of and was not apprised of the interim order passed in Crl.R.P. 4588 of 2006 on 21.12.2006. In these circumstances, it is submitted that the petitioner is really on bail even now, eventhough he has been authorised to be detained on the basis of the production warrant issued by the learned Magistrate from 2.5.2007.

7. The learned Prosecutor, after taking instructions and after perusing the files, also submits that an inadvertent error appears to have crept in. Neither the accused nor the Prosecutor nor the Court was cognizant of the fact that there was an interim order dt. 21.12.2006 staying all further proceedings pursuant to the order in Crl.M.P.3038 of 2006 dt. 19.9.2006.

8. The long and short of the above discussions is that the detention of the petitioner from 2.5.2007 is incorrect, improper and without legal justification. It appears that there was confusion in the

matter. The petitioner is involved in many crimes. Even the petitioner does not appear to have been sure of the factual position. That is the only way to understand the omission on the part of the petitioner and his counsel to bring to the notice of the Court the fact when a detailed order was passed in B.A. 5155 of 2007 dt.10.10.2007.

9. Be that as it may, I am now satisfied that the petitioner is on a valid order of bail. The order canceling his bail has been stayed as per order in revision, which is pending even now, and the interim order continues to be in force. The only consequent order this Court can pass is to direct release of the petitioner forthwith from custody. He shall continue to be bound by the bond executed by him and the conditions imposed on him when he was initially released on bail i.e. default bail was granted to him by the learned Magistrate. He shall scrupulously comply with the conditions imposed as per the said order, until these conditions are modified or vacated.

10. This application is accordingly allowed. The Registry shall forthwith communicate the direction to the learned Magistrate and the

prison authorities to release the petitioner from custody forthwith, if his continued detention is not necessary in connection with any other case.

11. Crl.R.P.No.4588 of 2006 shall be called before the appropriate Bench for consideration and disposal. The Registry shall forthwith bring to the notice of that Court this order.

(R. BASANT)
Judge

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